

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

AARON MATTHEW MITCHELL,	:	
	:	
Plaintiff,	:	CIVIL ACTION No. 07-509
	:	
v.	:	
	:	
ST. PAUL FIRE AND CASUALTY INSURANCE COMPANY,	:	
	:	
Defendant.	:	
	:	

DEFENDANT'S ANSWER TO PLAINTIFF'S COMPLAINT

Defendant, City of Newark, by and through its counsel, Marshall, Dennehey, Warner, Coleman & Goggin, hereby responds to Plaintiff's Complaint as follows:

1. Admitted.
2. Admitted.
3. Admitted upon information and belief.
4. Admitted.
5. Admitted.
6. Defendants have insufficient knowledge to admit or deny the allegations contained in this paragraph of the Complaint.

7. Defendants have insufficient knowledge to admit or deny the allegations contained in this paragraph of the Complaint. To the extent, however, that the allegations contained in this paragraph of the Complaint are meant to imply or state that Plaintiff is entitled from Defendants monies in the amount of the alleged incurred lien by the identified Worker's Compensation Carrier and, such an implication or statement is Denied.

8. Defendant has insufficient knowledge to admit or deny the allegations contained in this paragraph of the Complaint.

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

Plaintiff's Complaint fails to state a claim upon which relief may be granted.

SECOND AFFIRMATIVE DEFENSE

There is/are no allegation(s) as to Defendant in Plaintiff's Complaint.

THIRD AFFIRMATIVE DEFENSE

The injuries alleged pre-existed the incident alleged in Plaintiff's Complaint or are otherwise not related to the alleged incident.

FOURTH AFFIRMATIVE DEFENSE

Defendant denies any liability to Plaintiff whatsoever. If found liable, however, Defendants, contend that the accident and any resulting injuries were proximately caused by the negligence of Plaintiff in that he:

- (a) failed to make a proper lookout;
- (b) failed to exercise reasonable care for his;
- (c) failed to act as a reasonably prudent person under the circumstances then existing;
- (d) failed to exercise proper control of the vehicle;
- (e) was otherwise negligent.

FIFTH AFFIRMATIVE DEFENSE

To the extent that the negligence of the Plaintiff is deemed to be 51% or more of the overall cause, recovery is barred. Otherwise, any award in favor of the Plaintiff must be reduced by his pro rata share of negligence.

REQUEST FOR PHYSICAL EXAMINATION

Defendant reserves the right to request a physical examination and to submit defense expert reports upon receipt of relevant materials produced by Plaintiff.

WHEREFORE, the Defendant seeks dismissal with prejudice with costs assessed against Plaintiff.

**MARSHALL, DENNEHEY, WARNER,
COLEMAN & GOGGIN**

/s/ *Daniel A. Griffith* DE ID No. 4209

Date: August 22, 2007

DANIEL A. GRIFFITH, ESQUIRE (No. 4209)
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Attorneys for Defendant

CERTIFICATE OF SERVICE

I, Daniel A. Griffith, Esquire hereby certify that on the date indicated below a true and correct copy of Defendant's Answer to Plaintiff's Complaint were forwarded to the below named addressee via e-filing and first-class mail:

H. Clay Davis, III, Esquire
Henry Clay Davis, III, P.A.
303 N. Bedford Street
PO Box 744
Georgetown, DE 19947
Attorney for Plaintiff

**MARSHALL, DENNEHEY, WARNER,
COLEMAN & GOGGIN**

/s/ *Daniel A. Griffith* DE ID No. 4209

Date: August 22, 2007

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